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27 JUL 2006

JONES DAY
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New York, NY 10017

In re Application of :
MUELLER :
Application No.: 10/522,435 :
Filing Date: January 19, 2005 :
Attorney Docket No.: 007413-100 JWP/MP :
For: POSITION INDICATOR, MEASURING :
APPARATUS AND METHOD OF :
MANUFACTURING A POSITION :
INDICATOR :

DECISION

This decision is in response to the papers filed on 11 May 2005 which are treated as a petition under 37 CFR 1.181. No fee is required.

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

The subject application was filed with a transmittal letter (Form PTO-1390) requesting processing under 35 U.S.C. 371 on 19 January 2005 and processed by the Office as such. In the petition filed 11 May 2005, applicant claims that the subject application contained conflicting information in the initial filing and requests that the subject application be treated as a bypass continuation.

A review of the file reveals that the above-captioned application was improperly treated by the Office as a filing under 35 U.S.C. 371. In the papers filed 19 January 2005, applicant submitted a preliminary amendment which states, in part:

This application is a continuation of International Patent Application No. PCT/EP2003/007792, filed July 17, 2003 which claims priority to German Patent Application No. 102 32 895.1 filed July 19, 2002, the contents of which are incorporated by reference.

The official USPTO Notice published in the Official Gazette at 1077 OG 13 (April 14, 1987) entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371, (the National Stage of PCT)" states, in part, that: "[i]f there are any conflicting instructions as to which section of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111." Here, the preliminary amendment contains conflicting information which should have made this a filing under 35 U.S.C. 111(a).

This application is being forwarded to the National Stage Processing Branch for removal of the international papers communicated from the International Bureau.

10/522,435

2

Thereafter, the application will be forwarded to the Office of Initial Patent Examination for further processing under 35 U.S.C. 111(a) with a filing date of January 19, 2005.

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